

Introduced by Senator Alquist

January 4, 2012

An act to repeal and add Article 2 (commencing with Section 7070) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 950, as introduced, Alquist. Sales and use taxes: administration: tax amnesty.

The Sales and Use Tax Law imposes sales and use taxes which are administered by the State Board of Equalization.

This bill would require the board to develop and administer a tax amnesty program for taxpayers subject to sales taxes and for taxpayers who are qualified purchasers, as defined, subject to use taxes during a 2-month period beginning ____, and ending ____, inclusive, or during any other 2-month period ending before ____, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 2 (commencing with Section 7070) of
- 2 Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation
- 3 Code is repealed.
- 4 SEC. 2. Article 2 (commencing with Section 7070) is added
- 5 to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation
- 6 Code, to read:

Article 2. Tax Amnesty Program

7070. The board shall develop and administer a tax amnesty program for taxpayers subject to the sales taxes imposed under Chapter 2 (commencing with Section 6051) of this part and Section 35 of Article XIII of the California Constitution and for taxpayers who are qualified purchasers as defined in Section 6225 subject to the use taxes imposed under Chapter 3 (commencing with Section 6201) of this part and Section 35 of Article XIII of the California Constitution, as provided in this article.

7071. The tax amnesty program shall be conducted for a two month period beginning ____ through ____, inclusive, or during a timeframe ending no later than _____. The program shall apply to tax liabilities due and payable for tax reporting periods beginning before January 1, 2012.

7072. (a) For any taxpayer who meets the requirements of Section 7073:

(1) The board shall waive all penalties imposed by this part, for the tax reporting periods for which tax amnesty is allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously determined or proposed to be determined.

(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer, for the tax reporting periods for which tax amnesty is requested, for the nonreporting or underreporting of tax liabilities.

(b) This section does not apply to violations of this part for which, as of the first day of the amnesty period specified in Section 7071, (1) the taxpayer is on notice of a criminal investigation by a complaint having been filed against him or her or by written notice having been mailed to him or her that he or she is under criminal investigation, or (2) a court proceeding has already been initiated.

(c) No refund or credit shall be granted of any penalty paid prior to the time the taxpayer makes a request for tax amnesty pursuant to Section 7073.

7073. (a) This article shall apply to any taxpayer who, during the amnesty period specified in Section 7071, meets all of the following:

(1) Is eligible to participate in the tax amnesty program.

1 (2) Files a completed amnesty application with the board, signed
2 under penalty of perjury, to participate in the tax amnesty program.

3 (3) Within 60 days after the conclusion of the tax amnesty
4 period, does all of the following:

5 (A) Files completed tax returns for all tax reporting periods for
6 which he or she has not previously filed a tax return and files
7 completed amended returns for all tax reporting periods for which
8 he or she underreported his or her tax liability.

9 (B) Pays in full the taxes and interest due for all periods for
10 which amnesty is requested, or applies for an installment agreement
11 under subdivision (b).

12 (C) For taxpayers who have not paid in full any tax liabilities
13 due and payable for tax reporting periods beginning before January
14 1, 2012, pays in full the taxes and interest due for each period for
15 that portion of the proposed determination for each period for
16 which amnesty is requested or applies for an installment payment
17 agreement under subdivision (b).

18 (4) In the case of any taxpayer that has filed for bankruptcy
19 protection under Title 11 of the United States Code, submits an
20 order from a Federal Bankruptcy Court allowing the taxpayer to
21 participate in the amnesty program.

22 (b) The board may enter into an installment payment agreement
23 in lieu of the complete payment required under subparagraph (B)
24 of paragraph (3) of subdivision (a), but only if final payment under
25 the terms of that installment payment agreement is due and is paid
26 no later than _____. The installment payment agreement shall
27 include interest on the outstanding amount due at the rate
28 prescribed by law. Failure by the taxpayer to fully comply with
29 the terms of the installment payment agreement shall render the
30 waiver of penalties null and void, unless the board determines that
31 the failure was due to reasonable causes, and the total amount of
32 tax, interest, and all penalties shall be immediately due and payable.

33 (c) If, subsequent to the amnesty period specified in Section
34 7071, the board issues a deficiency determination upon a return
35 filed pursuant to subdivision (a), or upon any other nonreporting
36 or underreporting of tax liability by any person who could have
37 otherwise been eligible for amnesty, the board shall impose
38 penalties at a rate that is double the rate of penalties described in
39 law and criminal action may be brought under this part only with
40 respect to the difference between the amount shown on that return

1 and the correct amount of tax, or the amount of unreported or
2 underreported tax, whichever the case may be. This action may
3 not invalidate any waivers granted under Section 7072.

4 (d) If the board issues a deficiency determination under
5 conditions described in subdivision (c), the board may issue that
6 deficiency determination within 10 years from the last day of the
7 calendar month following the quarterly period for which the
8 amount is proposed to be determined.

9 (e) The application required under paragraph (2) of subdivision
10 (a) shall be in the form and manner specified by the board, but in
11 no case shall a mere payment of any taxes and interest due, in
12 whole or in part, for any period otherwise eligible for amnesty
13 under this part, be deemed to constitute an acceptable amnesty
14 application under this part. For purposes of the preceding sentence,
15 the application of a refund from one period to offset a tax liability
16 for another period otherwise eligible for amnesty shall not be
17 allowed without the filing of an amnesty application under this
18 part.

19 7074. (a) Except for taxpayers who have entered into an
20 installment payment agreement pursuant to subdivision (b) of
21 Section 7073, there shall be added to the tax for each period for
22 which amnesty could have been requested:

23 (1) For amounts that are due and payable on the last date of the
24 amnesty period, an amount equal to 50 percent of the accrued
25 interest payable under Section 6591 for the period beginning on
26 the date in which the tax was due and ending on the last day of the
27 amnesty period specified in Section 7071.

28 (2) An amount equal to 50 percent of the interest computed
29 under Section 6591 on any final amount, including final
30 deficiencies and self-assessed amounts, for the period beginning
31 on the date in which the tax was due and ending on the last day of
32 the amnesty period specified in Section 7071.

33 (b) The penalty imposed by this section is in addition to any
34 other penalty imposed under this part.

35 (c) Article 2 (commencing with Section 6481) does not apply
36 with respect to the assessment or collection of any penalty imposed
37 by subdivision (a).

38 (d) Notwithstanding Chapter 7 (commencing with Section 6901),
39 a taxpayer may not file a claim for refund for any amounts paid
40 in connection with the penalty imposed under this section.

1 7074.5. If the board finds that a person's failure to make a
2 timely return or payment is due to reasonable cause and
3 circumstances beyond the person's control, and occurred
4 notwithstanding the exercise of ordinary care and the absence of
5 willful neglect, the person shall be relieved of the penalties
6 provided by Sections 7073 and 7074, as added by the act adding
7 this section, as described in Section 6592.

8 7075. Any taxpayer who has an existing installment payment
9 agreement under Section 6832 as of the start of the amnesty
10 program, and who does not participate in the amnesty program,
11 may not be subject to the penalty imposed under Section 7074.

12 7075.5. The board shall issue forms and instructions and take
13 other actions needed to implement this article. The provisions
14 contained in subdivision (c) of Section 19735, to the extent feasible
15 and practical, shall also apply to the board.

16 7075.7. The board shall adequately publicize the tax penalty
17 amnesty program so as to maximize public awareness of the
18 participation in the program. The board shall coordinate to the
19 highest degree possible its publicity efforts and other actions taken
20 in implementing this article with similar programs administered
21 by the Franchise Tax Board.

22 7075.9. Subdivision (b) of Section 19736, to the extent feasible
23 and practical, shall also apply to the board.